

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/865,822
Filed: 05/25/2001
Examiner: Zec, Flip
Confirmation No.: 5846
Art Unit: 3744
Applicants: John E. Davis, et al.
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

June 29, 2010

MAIL STOP

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF KURT A. SUMME

Kurt A. Summe, being first duly cautioned and sworn, states as follows:

1. My name is Kurt A. Summe. I am an attorney in the law firm of Wood, Herron & Evans. I worked with the TollamCo, Corp. and the inventors in obtaining U.S. Patent No. 6,603,052, which issued on August 5, 2003.
2. On September 22, 2009, one of the inventors and the owner of the `052 Patent, John E. Davis, contacted the law firm of Wood, Herron & Evans, 441 Vine Street, 2700 Carew Tower, Cincinnati, OH 45202, and I spoke with Mr. Davis regarding the `052 Patent. Mr. Davis indicated that on September 22, 2009, he had just pulled out of an old archived file the original `052 Patent, as

well as a letter sent by Wood, Herron & Evans accompanying the original '052 Patent since it was originally received from Wood, Herron & Evans. Mr. Davis then noted the language regarding payment of the maintenance fees.

3. Mr. Davis indicated that he did not think any maintenance fees had been paid. He had just discovered the '052 Patent and the TollamCo, Corp. was bankrupted or otherwise dissolved.

4. I briefly looked through the Wood, Herron & Evans' docketing system, and advised Mr. Davis that the maintenance fees had not been paid by Wood, Herron & Evans absent instructions to do so from the owner of the Patent, and thus, the '052 Patent was expired for non-payment of maintenance fees. I also verified from the U.S. Patent and Trademark Office's website that the maintenance fee had not been paid and the Patent was expired.

5. Also in the call on September 22, 2009, I indicated that I would obtain the file history associated with the '052 Patent. At that time, I obtained a copy of the '052 Patent, and looked at the issue to calculate the first maintenance fee due date of February 5, 2007. I then determined that a six-month grace period was available taking the date of the first maintenance fee payment out to August 5, 2007. In reviewing 37 C.F.R. §1.378(b) and Section 2590 in the Manual of Patent Examination Procedure (MPEP) regarding the late payment of maintenance fees, I determined that, as of September 22, 2009, Mr. Davis was beyond the twenty-four months following the six-month grace period for the '052 Patent in which to file a Petition to Accept an Unintentionally Delayed Payment of the First Maintenance Fee.

6. On September 25, 2009, in a follow-up call to Mr. Davis, I advised Mr. Davis that it would be necessary to file any Petition to pay the maintenance fee late with a sufficient showing regarding the delay being unavoidable and any reasonable efforts to pay the maintenance fee. The fee could not just be paid late. I noted that the burden to establish an unavoidable situation was high, and it was necessary for Mr. Davis to provide specific facts regarding how the delayed payment was unavoidable, given the situation surrounding that issue and detailing any efforts that had been made by TollamCo, Corp., Mr. Davis, or the other inventor, Mr. Klonne, to address, calendar, docket and pay the maintenance fee. Mr. Davis indicated that since he had just discovered the '052 Patent, he would have to work in trying to gather the facts surrounding the Patent, the two inventors, TollamCo, Corp., and the issue of the maintenance fees. To the date of filing this Petition, I have worked with Mr. Davis in the arduous and difficult task in trying to determine the various facts available surrounding the delayed payment of the maintenance fee.

7. Assisting in this regard, I had checked the records of Wood, Herron & Evans, and also checked the records at the U.S. Patent and Trademark Office regarding any executed Assignment document in the file associated with the '052 Patent and TollamCo, Corp. or any recording of an Assignment with respect to the '052 Patent. I found no Assignment executed by the two inventors in the files of Wood, Herron & Evans, and did not find an Assignment recorded against the '052 Patent at the United States Patent and Trademark Office.

8. In the September 25, 2009 phone call, I discussed the issue of any Assignment and any efforts made by the TollamCo, Corp. and/or the two inventors, Mr. Davis and Mr. Klonne to pay the maintenance fee. I indicated that, to establish the unavoidable nature of the delayed payment of the maintenance fee, the records needed to be examined to determine the ownership of the '052 Patent and what efforts were taken by any ownership entities, including possibly the two inventors individually, for payment of the maintenance fee.

9. I had worked with the inventors Mr. Davis and Mr. Klonne in the preparation of and filing of the application that issued into the '052 Patent. I also worked in the prosecution of that application until Patent issuance. I reviewed the prosecution records we have in the files of Wood, Herron & Evans regarding that Patent to assist Mr. Davis in determining the facts surrounding the Patent, the ownership thereof, and any maintenance fee payments.

10. During prosecution, on September 24, 2001, I received a note and corporation documents from Mr. Davis indicating that the two inventors wished to assign the Patent to TollamCo, Corp. (Exhibit A). On September 27 2001, I forwarded an Assignment to Mr. Davis at TollamCo, Corp. (Exhibit B). On November 26, 2001, in further correspondence to Mr. Davis and Mr. Klonne, I indicated we had not yet received the executed Assignment (Exhibit C). No executed Assignment document was received by me from Mr. Davis and Mr. Klonne that would have assigned the two inventors' rights to TollamCo, Corp. No Assignment was recorded at the U.S. Patent Office by me with respect to the '052 Patent.

11. I also checked the records at the U.S. Patent and Trademark Office regarding any recording of an Assignment with respect to the '052 Patent. I did not find any.

12. I did not record any Assignment for Mr. Davis and Mr. Klonne, and did not indicate any corporation ownership on the Issue Fee Payment documents for the '052 Patent.

13. On August 8, 2003, I had forwarded to Mr. Davis, at the address of 223 Congress Street, New Richmond, OH 45205, the original '052 Patent. Attached was a cover letter that noted the '052 Patent would expire May 25, 2021, and that maintenance fees were due 3½, 7½, and 11½ years from the issued date of the '052 Patent. The letter also indicated that Wood, Herron & Evans would attempt to notify the Patent owner on the 3rd, 7th, and 11th anniversaries of the need to pay the maintenance fees and the amount of the fees (Exhibit D).

14. We enclosed with that letter a self-addressed postcard to indicate receipt of the formal Patent document. We received the postcard back on August 14, 2003 (Exhibit E).

15. I did not have any further instructions from TollamCo, Corp., Mr. Davis, or Mr. Klonne regarding the '052 Patent. I had no further contact on patent matters with and did no further patent work with TollamCo, Corp., Mr. Davis, or Mr. Klonne.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the Application or any Patent issued thereon.

Further Declarant sayeth naught.

6-29-10
Date

Kurt A Summe
Kurt A. Summe

TollamCo, Corp

7131 East Kemper Road
Cincinnati, OH 45249
Phone: 513-469-8244
Fax: 513-469-8442
E-mail: TollamCo@aol.com

September 20, 2001

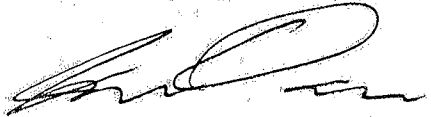
Mr. Kurt Summe
Wood, Herron & Evans
2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202-2917

Dear Kurt:

We wish to assign the patent to TollamCo, Corp. Attached is our certificate of incorporation which should clear up any issues regarding the proper company name to use.

We have no foreign sales at this time, so probably will not pursue any foreign patents.

Sincerely,



John Davis

EXHIBIT A



The State of Ohio

Bob Taft

Secretary of State

CP 7977

Certificate

It is hereby certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous Filings: that said records show the filing and recording of: AND MIS CHN

 TOLLAMCO, CORP. FORMERLY TRILAMCO, INC.

of:

United States of America
State of Ohio
Office of the Secretary of State

Recorded on Roll 6207 at Frame 0923 of
the Records of Incorporation and Miscellaneous Filings.

Witness my hand and the seal of the Secretary of State at

Columbus, Ohio, this 19TH day of MARCH .

A.D. 19 98 .




Bob Taft
Secretary of State



Prescribed by
Bob Taft, Secretary of State
30 East Broad Street, 14th Floor
Columbus, Ohio 43266-0418
Form C-109 (January 1991)

Charter No. CP7977

Approved EJS

Date 3-19-98

Fee \$35-

06207-0925

98031942001

CERTIFICATE OF AMENDMENT BY INCORPORATORS

To Articles of

TRILAMCO, INC.

(Name of Corporation)

(Sec. 1701.70(A) O.R.C.)

WE, the undersigned, being all of the incorporators of the above named corporation, do certify that the subscriptions to shares have not been received in such amount that the stated capital of such shares is at least equal to the stated capital set forth in the articles as that with which the corporation will begin business and that we have elected to amend the articles as follows:

The name of the corporation shall be changed from TRILAMCO, INC. to TollamCo, Corp. effective immediately upon the filing of a Certificate of Amendment to the Articles of Incorporation, with the Ohio Secretary of State.

RECEIVED

MAR 19 1998

BOB TAFT
SECRETARY OF STATE

IN WITNESS WHEREOF, we, being all of the incorporators of the above named corporation, have hereto subscribed our names this 18th day of March 19 98

BY Timothy P. Klonne
Timothy P. Klonne

BY _____

BY _____

BY _____

(Incorporators)

JOHN D. POFFENBERGER
BRUCE TITTEL
DONALD F. FREI
DAVID J. JOSEPHIC
A. RALPH NAVARO, JR.
DAVID S. STALLARD
J. ROBERT CHAMBERS
GREGORY J. LUNN
KURT L. GROSSMAN
CLEMENT H. LUKEN, JR.
THOMAS J. BURGER
GREGORY F. AHRENS
WAYNE L. JACOBS
KURT A. SUMME
KEVIN G. ROONEY
KEITH R. HAUPIT
THEODORE R. REMAKLUS
THOMAS W. HUMPHREY
SCOTT A. STINEBRUNER

WOOD, HERRON & EVANS, LLP

2700 CAREW TOWER

441 VINE STREET

CINCINNATI, OHIO 45202-2917

TELEPHONE: 513-241-2324

FACSIMILE: 513-421-7269

EMAIL: info@whepatent.com

PATENT, TRADEMARK, COPYRIGHT
AND UNFAIR COMPETITION LAW
AND RELATED LITIGATION

EDMUND P. WOOD 1923-1968
TRUMAN A. HERRON 1935-1976
EDWARD B. EVANS 1936-1971

JOSEPH R. JORDAN
C. RICHARD EBY

DAVID E. PRITCHARD
DAVID H. BRINKMAN
J. DWIGHT POFFENBERGER, JR.
BEVERLY A. LYMAN, Ph.D.
KATHRYN E. SMITH
KRISTI L. DAVIDSON
P. ANDREW BLATT, Ph.D.
DAVID E. JEFFERIES
DAVID E. FRANKLIN
WILLIAM R. ALLEN, Ph.D.
JOHN PAUL DAVIS
DOUGLAS A. SCHOLER
FRANK M. MUNGO (KY BAR)
BRETT A. SCHATZ
ALLISON A. DAVIDSON

TECHNICAL ADVISORS
HENRY M. LABODA, Ph.D.
LARRY D. MOORE, B.S.E.E.
DAVID W. DORTON, M.M.E.
RONALD J. RICHTER, M.D.
G. PRABHAKAR REDDY, M.S.CH.

September 27, 2001

Mr. John E. Davis
TolLamCo, Corp.
7131 East Kemper Road
Cincinnati, Ohio 45249

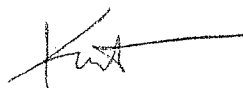
Re: U.S. Patent Application, Serial No. 09/865,822
FLUID ABSORBENT ARTICLE FOR SURGICAL USE
Our Ref: TRIL-05

Dear John:

Thank you for sending along the copy of your Certificate of Incorporation. Attached is the Assignment for your invention which conveys the rights of you and Tim to the corporation. Please review the assignment, and if you find everything in order sign where indicated, having each signature notarized. Then return the Assignment to me and I will tend to having it recorded at the U.S. Patent and Trademark Office.

If you have any questions, give me a call.

Very truly yours,



Kurt A. Summe

KAS:jra
Enclosure

EXHIBIT B

ASSIGNMENT OF INVENTION AND PATENTS THEREON

WHEREAS, We, John E. Davis, 9877 Hayfield Court, Loveland in the State of Ohio, and Timothy P. Klonne, 10726 Weller Woods Drive, Cincinnati, in the State of Ohio have invented a Fluid Absorbent Article for Surgical Use, as fully disclosed in an application for Patent so entitled and executed by us on even date herewith preparatory to obtaining Letters Patent of the United States therefor; and whereas, ToiLamCo, Corp., a corporation organized under the Laws of the State of Ohio and having its principal office at 7131 East Kemper Road, Cincinnati, Ohio. 45249, desires to acquire the entire interest in and to the subject matter disclosed in said application and in and to all patents issued or to be issued thereon.

NOW, THEREFORE, to all whom it may concern, be it known that, for and in consideration of the sum of One Dollar to us in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, we have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said TolLamCo, Corp. our entire right, title and interest in and to the subject matter disclosed in said application and in and to all Letters Patent Domestic and Foreign issued or to be obtained thereon, including all rights and interests with priority rights under the Paris Convention for the Protection of Industrial Property, the International Patent Cooperative Union, European Patent Convention, Common Market Convention, or any other Convention or Union for each country of said Convention or Union; and we do hereby authorize and request the Commissioner of Patents to issue the Letters Patent granted on said application and all future patents granted upon the subject matter disclosed therein to the above named Assignee, its legal representatives and assigns.

Witness my hand this _____ day of _____, 2001.

John E. Davis Inventor

STATE OF _____) ss.

COUNTY OF _____

On this _____ day of _____, 2001, before me personally appeared John E. Davis, to me known and known by me to be the above named individual, who duly acknowledged the signing of the foregoing instrument to be a voluntary act and deed and who executed the same for the uses and purposes therein specified.

(SEAL) _____ Notary Public

My Commission Expires:

Witness my hand this _____ day of _____, 2001.

Timothy P. Klonne Inventor

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2001, before me personally appeared Timothy P. Klonne, to me known and known by me to be the above named individual, who duly acknowledged the signing of the foregoing instrument to be a voluntary act and deed and who executed the same for the uses and purposes therein specified.

(SEAL) _____ Notary Public

My Commission Expires:

K:\TRIL\05\assignment.s27.wpd

WOOD, HERRON & EVANS, LLP.

JOHN D. POFFENBERGER
BRUCE TITTEL
DONALD F. FREI
DAVID J. JOSEPHIC
A. RALPH NAVARO, JR.
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PATENT, TRADEMARK, COPYRIGHT
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EDMUND P. WOOD 1923-1968
TRUMAN A. HERRON 1935-1976
EDWARD B. EVANS 1936-1971

November 26, 2001

JOSEPH R. JORDAN
C. RICHARD EBY

DAVID E. PRITCHARD
DAVID H. BRINKMAN
J. DWIGHT POFFENBERGER, JR.
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RONALD J. RICHTER, M.D.
G. PRABHAKAR REDDY, M.S.CH.

Mr. John E. Davis
TolLamCo, Inc.
7131 East Kemper Road
Cincinnati, Ohio 45249

Re: U.S. Patent Application, Serial No. 09/865,822
FLUID ABSORBENT ARTICLE FOR SURGICAL USE
Our Ref: TRIL-05

Dear John:

Please find enclosed the current invoice for the work done with your application. The bill reflects time and costs associated with preparing and filing an Information Disclosure Statement which cites to the U.S. Patent Office all of the prior art of which we are aware. We are under a continuing obligation to cite relevant prior art to the patent office, when we become aware of such art. Therefore, if you come across any additional prior art during any sales or promotion of the invention, please let me know.

The invoice also reflects time and costs associated with filing the executed Declaration. You will recall that, due to the time crunch, it was necessary to file the application with an executed Declaration. Pursuant to that, we received a Notice to File Missing Parts from the Patent Office, and we tended to that Notice by filing the executed Declaration.

We have not yet received any Office Actions from the Patent Office on your application, but we will keep you apprised as to the status of the application when we hear anything further.

On a related matter, we have not yet received an executed Assignment from you. It was my understanding that you wished to designate your firm as the owner of the patent,

EXHIBIT C

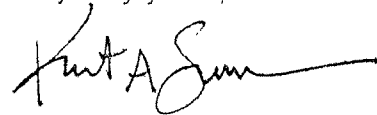
WOOD, HERRON & EVANS, LLP

Mr. John E. Davis
TolLamCo, Inc.
November 26, 2001
Page 2

and the Assignment is a necessary step to accomplish that goal. If your plans have changed, please let me know. Otherwise, I will expect to receive the executed Assignment in the near future.

If you have any questions at all, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kurt A. Summe", with a long horizontal flourish extending to the right.

Kurt A. Summe

KAS:jra
Enclosure

cc: Mr. Tim Klonne

WOOD, HERRON & EVANS, LLP

JOHN D. POFFENBERGER
BRUCE TITTEL
DONALD F. FREI
DAVID J. JOSEPHIC
DAVID S. STALLARD
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DAVID H. BRINKMAN

OF COUNSEL
THOMAS W. FLYNN

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CINCINNATI, OHIO 45202-2917
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G. PRABHAKAR REDDY, M.S.CH.
SARAH OTTE GRABER

TECHNICAL ADVISORS
HENRY M. LABODA, Ph.D.
LARRY D. MOORE, B.S.E.E.

August 8, 2003

Mr. John E. Davis
223 Congress Street
New Richmond, Ohio 45205

Re: U.S. Patent Application, Serial No. 09/865,822
FLUID ABSORBENT ARTICLE FOR SURGICAL USE
Our Ref: TRIL-05

Dear John:

I am pleased to enclose original U.S. Patent No. 6,603,052, for the above-identified invention. This patent issued on August 5, 2003, and will expire on May 25, 2021. This patent has not yet been proofread for errors, but we will notify you of any discrepancies in that regard. Also attached are two paper copies for your files.

All products manufactured in accordance with this patent should be marked "U.S. Patent No. 6,603,052." Please note that the terminal notation "B2" does not form part of the patent number, but is used by the Patent Office to harmonize with lettering used by the International Patent Offices to distinguish patents from patent applications. It need not be shown when marking products.

Maintenance fees are due 3 ½, 7 ½ and 11 ½ years from the issue date of the patent. We will notify you on about the 3rd, 7th and 11th anniversaries of the need to pay the maintenance fee and the amount of the fee.

Since these are original documents, they should be kept in a safe place. A self-addressed postcard has been included for your signature and return to me which acknowledges your receipt of these original documents.

Very truly yours,



Kurt A. Summe

Encl.

EXHIBIT D

Client/Matter: TRIL-05

WHE Docket No.: 46445

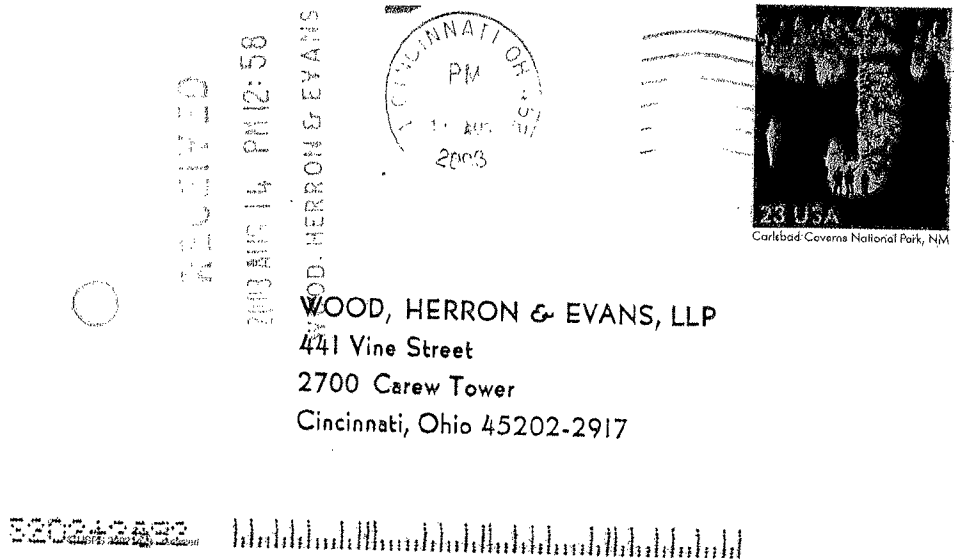
The signature of the undersigned may be taken as acknowledging the receipt of the following items in the captioned case:

Applicant: Davis et al.
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE
Serial No.: 09/865,822
Date of Patent: August 5, 2003
Enclosures: Original and two paper copies of U.S. Patent No. 6,603,052

X
Date of Receipt

X
Signature

FRONT SIDE OF POSTCARD



BACK SIDE OF POSTCARD

EXHIBIT E